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Patents, Washington, DC 20231.  
Name: Maritza Kidd  
2/6/2001 Signature Date Maritza Kidd Signature

Petitioner's Docket No. FERN-P004

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Fernandez et al.

Application No.: 09/145,167

Art Unit: 2163

Filed: 09/01/1998

Examiner: Robinson Boyce, A

For: ADAPTIVE DIRECT TRANSACTION FOR NETWORKED CLIENT GROUP

Asst. Commissioner for Patents  
Washington D.C. 20231

**TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLCIATION - 37 C.F.R. § 1.192)**

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on December 11, 2000.

2. STATUS OF APPLICANT

This application is on behalf of

☐ other than a small entity

☒ small entity

A statement:

☐ is attached.

☒ was already filed.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. 1.17 (c), the fee for filing the Appeal Brief is:

☒ small entity

\$155.00

☐ other than a small entity

\$310.00

Pursuant to 37 C.F.R. 1.17 (d), the fee for request for Oral Hearing is:

☐ small entity

\$135.00

☐ other than a small entity

\$270.00

Appeal Brief fee due \$ 155.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. §1.136 apply.

- (a) ☐ Applicant petitions for an extension of time under 37 C.F.R. §1.136 (fees: 37 C.F.R. § 1.17 (a) (1)-(5)) for the total number of months checked below:

	Extension (months)	Fee for other than <u>small entity</u>	Fee for <u>small entity</u>
<input type="checkbox"/>	one month	\$110.00	\$55.00
<input type="checkbox"/>	two months	\$390.00	\$195.00
<input type="checkbox"/>	three months	\$890.00	\$445.00
<input type="checkbox"/>	four months	\$1,390.00	\$695.00
<input type="checkbox"/>	five months	\$1,890.00	\$945.00

Fee: \$ \_\_\_\_\_

If an additional extension of time is required, please consider this petition thereof.

- ☐ An extension for \_\_\_\_\_ months has already been secured, and the fee paid therefore of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension is now requested.

Extension fee due with this request \$ \_\_\_\_\_

or

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal Brief Fee \$ 155.00

Extension Fee (if any) \$ \_\_\_\_\_.

6. FEE PAYMENT

☒ Attached is check No. 1364 in the sum of \$ 155.00. However, in case Applicant inadvertently miscalculated any required fee, the Commissioner is hereby authorized to charge the necessary additional amount associated with this communication or credit any overpayment to **Deposit Account No. 500482**. A duplicate copy of this authorization is enclosed.

☐ Charge Account No. 500482 the sum of \$ \_\_\_\_\_.  
A duplicate of this transmittal is attached.

7. FEE DEFICIENCY


☒ If any additional extension and/or fee is required, this is a request therefore and to charge Account No. 500482.

AND/OR

☐ If any additional fee for claims is required, charge Account No. \_\_\_\_\_.

Respectfully submitted,

2/6/2001  
Date

  
\_\_\_\_\_  
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Attorney Docket No. FERN-P004



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BOARD OF  
PATENT APPEALS AND INTERFERENCES**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
Fernandez et al.	)	Examiner: Robinson Boyce, A.
	)	
Application No. 09/145,167	)	Art Unit: 2163
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Filed: 9/01/1998	)	
	)	
For: ADAPTIVE DIRECT TRANSACTION )	)	
FOR NETWORKED CLIENT GROUP )	)	
	)	
	)	

Asst. Commissioner for Patents  
Washington D.C. 20231

**APPEAL BRIEF**  
**IN SUPPORT OF APPELLANTS' APPEAL**  
**TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Dear Sir:

The Appellants hereby submit, in triplicate, the following Brief pursuant to 37 CFR 1.192 in support of the appeal from a final decision by the Examiner, mailed December 11, 2000, in the above-captioned case. The Appellants respectfully request consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the above-captioned patent application.

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## **I. REAL PARTY IN INTEREST**

The real parties in interest are Dennis S. Fernandez and Irene Hu Fernandez, individuals, both having a principal place of business at 1047 El Camino Real, Suite 201, Menlo Park, CA 94025.

## **II. RELATED APPEAL AND INTERFERENCES**

To the best of Appellants' knowledge, there are no appeals or interferences related to the present appeal which will directly affect, be directly affected by, or have a bearing on the Board's decision.

## **III. STATUS OF CLAIMS**

Claims 1, 2, 4-8, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Levergood et al. (US Patent 5,708,780).

Claims 3, 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffberg et al. (US Patent 5,774,357) in further view of Levergood et al. (US Patent 5,708,780).

## **IV. STATUS OF AMENDMENTS**

All claims 1-20 on appeal are provided in Appendix A, including amendments to independent claims 1, 9, and 19, filed on May 19, 2000.

## **V. SUMMARY OF INVENTION**

The invention is a method and apparatus for adaptively or dynamically directing a group message or signal to a group of clients in an electronic network, wherein each client targeted for the group message or signal has one or more attributes that is classified and identified in a group registry, such group message or signal being mapped contextually to a group classification of client attributes.

## **VI. ISSUES**

The issue presented in this appeal is whether claims 1-20 are rendered unpatentable in view of Levergood et al. and Hoffberg et al.

More specifically, the following issues are presented in this appeal:

- Whether Levergood et al. teaches a method for adaptively or dynamically directing a group message or signal to a group of clients in an electronic network, wherein each client targeted for the group message or signal has one or more attributes that is classified and identified in a group registry, such group message or signal being mapped contextually to a group classification of client attributes.
- Whether it would have been obvious to combine Levergood et al. with Hoffberg et al. to provide a method and apparatus for adaptively or dynamically directing a group message or signal to a group of clients in an electronic network, wherein each client targeted for the group message or signal has one or more

attributes that is classified and identified in a group registry, such group message or signal being mapped contextually to a group classification of client attributes.

## **VII. GROUPING OF CLAIMS**

For the purposes of this appeal, claims 1-20 stand or fall together.

## **VIII. ARGUMENT**

The Final Rejection, which is the subject of this appeal, is based on a 35 U.S.C. 102(b) rejection using the reference of Levergood et al., and a 35 U.S.C. 103(a) rejection using the references of Levergood et al. and Hoffberg et al. Appellants hereby substantively differentiate the present claimed invention as patentable against the cited references, and thus respectfully submit the following arguments as to why such rejections are believed to be improper.

### **A. REJECTION OF CLAIMS 1, 2, 4-8, 19 AND 20 UNDER 35 U.S.C. 102(b) IS IMPROPER BECAUSE LEVERGOOD ET AL. FAIL TO DISCLOSE, TEACH OR SUGGEST EXPRESSLY RECITED ELEMENTS OF APPELLANTS' CLAIMED INVENTION.**

The cited reference, Levergood et al., describes an "Internet Server Access Control and Monitoring System," which pertains fundamentally to a client-initiated networking technique for "processing service requests from a client to a server" (see Summary: column 3, lines 7-8.) Such client-server relationship described by Levergood



et al. only refers to network sessions in which the client initially accesses information from a server using a browser (see Abstract: lines 4-7). Hence, in most significant part, Levergood et al. always describe Internet access that is necessarily user-initiated (see Figure 2A: step 100, Figure 2B: step 100, Figure 3: step 1, and Figure 6: step 1).

Accordingly, in response to such client-initiated request, Levergood et al. describe a passive access technique in which a server only may authenticate and service such request responsively, for example, from one or more requesting clients (see Detailed Description: column 10, lines 31-33). This description is proposed because Levergood et al. are admittedly motivated in addressing the problem primarily of an “open” Internet, and particularly the specific issue of how an Internet server may react to control unauthorized client-initiated access to its files (see Background of the Invention: column 2, lines 42-57).

Thus, as explained in the above paragraph by Appellants, Levergood et al. fail to describe or suggest generally the proactive approach of adaptive or dynamic directed transaction for a networked client group, as Appellants claim herein variously in independent claims 1 and 19, as well as in those claims that depend respectively thereon, and more specifically as recited in claims 1 and 19 where a server adaptively or dynamically “direct[s]” a group message or signal to a group of clients in an electronic network (i.e., Appellants hereby explain that because the group message or signal is “directed,” it is automatically initiated by the server, and not merely in response passively to one or more client requests).

Appellants respectfully submit that the claimed “directed” group messaging sets forth a novel and improved approach for delivering commercial messages and signals to various Internet users efficiently, without necessitating or otherwise waiting for any client-initiated requests.

Furthermore, Levergood et al. fail to describe or suggest the approach that each client targeted for the group message or signal has one or more attributes that is classified and identified in a group registry, and particularly the recited element whereupon the group message or signal is “mapped contextually” to a group classification of client attributes. Advantageously, Appellants believe that contextually-mapped group messaging enables more relevant and useful information that is distributed to the targeted client group.

In comparison, Levergood et al. merely describe so-called “gold users group” as part of a specific authentication scheme by a server for determining various client or user access (see Detailed Description: column 10, lines 30-33); however, Levergood et al. neither disclose nor suggest Appellants’ concept of “contextual mapping” of the directed group message or signal to a group classification of client attributes.

In addition, Appellants’ note (in the Background of Appellants’ application; see: page 2, lines 12-13) that a primary motivation for the presently claimed invention is to address a commercial need for improving on-line commerce through the Internet,

particularly with respect to enabling unsolicited direct marketing of messages or signals to multiple targets or clients groups, which cannot be addressed satisfactorily by the client-initiated approach described by Levergood et al.

The dependent claims not specifically addressed are allowable for at least the same reasons stated above with respect to the independent claims from which they depend.

Hence, Appellants respectfully submit that the rejection of claims 1, 2, 4-8, 19 and 20 under 35 U.S.C. 102(b) is improper because Levergood et al. fail to disclose, teach or suggest expressly recited elements of Appellants' claimed invention.

**B. REJECTION OF CLAIMS 3 AND 9-18 UNDER 35 USC 103(a) IS IMPROPER BECAUSE LEVERGOOD ET AL. AND HOFFBERG ET AL. FAIL TO DISCLOSE, TEACH OR SUGGEST, OR OTHERWISE RENDER OBVIOUS, EITHER INDIVIDUALLY OR IN COMBINATION, EXPRESSLY RECITED ELEMENTS OF APPELLANTS' CLAIMED INVENTION.**

As discussed above in detail, Appellants submit for at least the same reasons presented above that Levergood et al. fail to disclose, teach or suggest expressly recited elements of Appellants' claimed invention, in significant part, because such reference does not disclose, teach or suggest, among other things, certain expressly recited elements of Appellants' claimed invention, namely "directed" group messaging or signaling, as well as "contextual mapping" of the directed group message or signal.

Moreover, Appellants submit that the Hoffberg et al. reference, entitled “Human Factored Interface Incorporating Adaptive Pattern Recognition Based Controller Apparatus,” among other things, merely discloses sensor coupled to control electronics (see: in Fig 26, sensor 2602 and control 2601); however, Hoffberg et al. also fail to disclose, teach or suggest expressly recited elements of Appellants’ claimed invention, in significant part, because such reference does not disclose, teach or suggest, among other things, certain expressly recited elements of Appellants’ claimed invention, namely “directed” group messaging or signaling, as well as “contextual mapping” of the directed group message or signal.

Thus, Appellants respectfully submit that the Examiner fails to establish a prima facie case of obviousness. Appellant respectfully points out that according MPEP 706.02 (j), second paragraph, “to establish a prima facie case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations” (emphasis added).

Furthermore, in Northern Telecom Inc. v. Datapoint Corp., 908 F.2d 931, 934, 15 USPQ2d 1321, 1323 (Fed. Cir.), cert. denied, 498 US 920, 111 S.Ct. 296, 112 L.Ed.2d 250 (1990), the Court of Appeals for the Federal Circuit stated that when the patented invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination.

Neither Levergood et al. nor Hoffberg et al., singly or in combination, describe or suggest the method, system, or apparatus claimed presently by Appellants. Moreover,

Appellants submit that the dependent claims not specifically addressed are allowable for at least the same reasons stated above with respect to the independent claims from which they depend (i.e., claims 1 and 9.)

Hence, Appellants respectfully submit that the rejection of claims 3, and 9-18 under 35 U.S.C. 103(a) is improper because Levergood et al. and Hoffberg et al. fail to disclose, teach or suggest, or otherwise render obvious to a person of ordinary skill in the art at the time of the invention expressly recited elements of Appellants' claimed invention.

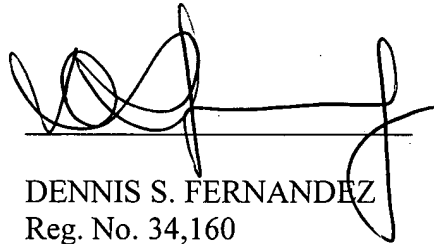
#### **IX. CONCLUSION**

For the foregoing reasons, Appellants submit that the applicable rejection under 35 USC 102(b) and 103(a) has been overcome, and the claims are in condition for allowance. If there are additional charges not accounted for herein, please charge them to Deposit Account No. 500482.

Respectfully Submitted,

FERNANDEZ & ASSOCIATES, LLP

Date: February 6, 2001



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20231

Name: Maritza Kidd

Maritza Kidd  
Signature

2/6/2001  
Signature Date

**X. APPENDIX A**

**Claims Presented For Appeal**  
**(as amended by 05/19/2000 amendment)**

1. In a network comprising a server coupled to one or more clients, a method for enhancing on-line commerce comprising the steps of:

determining by a server an attribute of a client;

classifying the client in a set according to the attribute; and

directing a message by the server to one or more clients classified in the set,

wherein the message is directed adaptively or dynamically according to the attributes of a plurality of clients classified in the set, the classification being contextually mapped with the directed message by comparing attributes to classify each client in the set, the set classification being identified in a group registry.

2. The method of Claim 1 wherein:

the attribute comprises a monitored location, time value, selection, condition, or affiliation associated with the client.

3. The method of Claim 2 wherein:

the attribute is provided by one or more client sensor.

4. The method of Claim 1 wherein:

the attribute is provided in a memory, and the client is classified by comparing the attribute with another attribute stored in the memory.

5. The method of Claim 1 wherein:

the client is classified in the set according to a determined substantial similarity.

6. The method of Claim 1 further comprising the steps of:

determining by the server a second attribute of the client;

classifying the client in a second set according to the second attribute; and

directing a second message by the server to one or more clients classified in the second set.

7. The method of Claim 1 further comprising the steps of:

determining by the server a second attribute of a second client;

classifying the second client in the set according to the second attribute; and

directing a second message by the server to the clients classified in the set.

8. The method of Claim 1 wherein:

the message comprises a commercial offering, an application program, a still image, or a video stream.

9. A client for coupling to a server in a network, the client comprising:

an interface; a processor; and a sensor;

wherein the interface is accessible by a server coupled to a network, whereby the processor may provide the network access to a signal generated by the sensor; the interface being



classifiable in a set according to the signal, the interface receiving a network signal according to the classified set, the network signal being directed adaptively or dynamically according to a plurality of generated sensor signals associated with the classified set, the classification being contextually mapped with the network signals and identified in a group registry.

10. The client of Claim 9 wherein:

the generated signal represents a monitored location, time value, selection, condition, or affiliation associated with the client.

11. The client of Claim 9 wherein:

the generated signal is stored in a database, and the interface is classified by comparing the generated signal with another generated signal stored in the database.

12. The client of Claim 11 wherein:

the generated signal is compared with the other generated signal to determine a substantial similarity or recognizable pattern therebetween.

13. The client of Claim 9 wherein:

the processor may provide the network access to a second signal generated by the sensor; the interface being classifiable in a second set according to the second signal, the interface receiving a second network signal according to the second set.

14. The client of Claim 9 wherein:

the network signal comprises a commercial offering, an application program, a still image, or a video stream.

15. The client of Claim 9 wherein:

the sensor comprises a global positioning satellite system (GPS) receiver for determining a position of the client.

16. The client of Claim 9 wherein:

the interface further comprises a web browser application for accessing the network.

17. The client of Claim 16 wherein:

the network access through the web browser application is secured by the sensor determining a genetic identification of a user of the web browser application.

18. The client of Claim 9 wherein:

the interface sends a transaction signal in response to the network signal.

19. A networking method for coupling a plurality of nodes, the networking method comprising:

receiving an attribute signal from a first node;

transmitting the attribute signal to a second node for classifying the first node in a set according to the attribute signal;

receiving a message signal from the second node; and

transmitting the message signal to one or more nodes classified in the set, the message signal being directed adaptively or dynamically according to a plurality of attribute signals associated with the classified set, the classification being contextually mapped with the attribute signals and identified in a group registry.

20. The networking method of Claim 19 wherein:

receiving a second attribute signal from a third node;

transmitting the second attribute signal to the second node for classifying the third node in the set according to the second attribute signal;

receiving a second message signal from the second node; and

transmitting the second message signal to one or more nodes classified in the set.